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HOUSE BILL 1005

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

BRETT D. JOHNSON

AN ACT

RELATING TO ENFORCEMENT OF THE COMPULSORY SCHOOL ATTENDANCE LAW;
AMENDING SECTIONS OF THE NMSA 1978; PROVIDING A PENALTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-12-7 NMSA 1978 (being Laws 1967,
Chapter 16, Section 175, as amended) is amended to read:

"22-12-7. ENFORCEMENT OF ATTENDANCE LAW - PENALTY. --

A. Each local school board and each governing
authority of a private school shall initiate the enforcement of
the provisions of the Compulsory School Attendance Law for
students enrolled in their respective schools.

B. To initiate enforcement of the provisions of the
Compulsory School Attendance Law, a local school board or
governing authority of a private school or its authorized
representatives shall give written notice by certified mail to

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1 or by personal service on the parent, guardian or custodian of a
2 student subject to and in noncompliance with the provisions of
3 the Compulsory School Attendance Law.

4 C. If violations of the provisions of the Compulsory
5 School Attendance Law continue after written notice as provided
6 in Subsection B of this section has occurred, the student shall
7 be reported to the probation services office of the judicial
8 district where the student resides for an investigation as to
9 whether the student shall be considered to be a neglected child
10 or a child in need of supervision and thus subject to the
11 provisions of the Children's Code.

12 D. If, after review by the juvenile probation office
13 of the children's court division or by the district judge of the
14 children's court division where the student resides, a
15 determination and finding is made that the nonattendance by the
16 student may have been caused by the parent, guardian or one
17 having custody of the student, then the matter will be referred
18 [~~by the juvenile probation office or by the children's court~~
19 ~~division of the district court~~] to the district attorney's
20 office or any law enforcement agency having jurisdiction for
21 appropriate investigation and filing of charges allowed under
22 the Compulsory School Attendance Law.

23 E. [~~A parent~~] Parents jointly, a single parent having
24 custody of the student, a guardian or one having custody of the
25 student who, after receiving written notice as provided in

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1 Subsection B of this section and after the matter has been
2 reviewed in accordance with Subsection D of this section,
3 knowingly allows the student to continue to violate the
4 Compulsory School ~~[Attendence]~~ Attendance Law shall be guilty of
5 a ~~[petty]~~ misdemeanor. ~~[Upon the first conviction, a fine of~~
6 ~~not less than twenty-five dollars (\$25.00) or more than one~~
7 ~~hundred dollars (\$100) may be imposed, or the parent, guardian~~
8 ~~or one having custody of the student may be ordered to perform~~
9 ~~community service. If violations of the Compulsory School~~
10 ~~Attendance Law continue, upon the second and subsequent~~
11 ~~convictions, the parent, guardian or one having custody of the~~
12 ~~student who knowingly allows the student to continue to violate~~
13 ~~the Compulsory School Attendance Law shall be guilty of a petty~~
14 ~~misdemeanor and shall be subject to a fine of not more than five~~
15 ~~hundred dollars (\$500) or incarceration for a period not to~~
16 ~~exceed six months or both.]~~

17 F. ~~[The provisions of this section shall apply~~
18 ~~beginning July 1, 1987.]~~ Upon the first conviction, the judge
19 after sentencing shall suspend or defer sentence and place the
20 person on unsupervised probation for that portion of the
21 deferred or suspended sentence. The district court shall attach
22 to its order deferring or suspending sentence reasonable
23 conditions as it may deem necessary to ensure that the defendant
24 will observe the laws of the United States and the various
25 states and the ordinances of any municipality and may be

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1 required to satisfy any other conditions reasonably related to
2 the defendant's rehabilitation.

3 G. At any time during probation, the court may issue a
4 warrant for the arrest of a probationer for violation of any
5 conditions of probation. The court shall then hold a hearing,
6 that may be informal, on the violation charged. If the
7 violation is established, the court may continue the original
8 probation, revoke the probation and either order a new probation
9 with any condition provided for in Section 31-20-5 or 31-20-6
10 NMSA 1978 or require the probationer to serve the balance of the
11 sentence imposed or any lesser sentence. If imposition of
12 sentence was deferred, the court may impose any sentence which
13 might originally have been imposed but credit shall be given for
14 time served on probation. Proceedings to revoke probation shall
15 be conducted in the same manner as outlined in Section 31-21-15
16 NMSA 1978.

17 H. If violations of the Compulsory School Attendance
18 Law continue, upon second and subsequent convictions, the
19 parent, guardian or one having custody of the student who
20 knowingly allows the student to continue to violate the
21 Compulsory School Attendance Law shall be guilty of a
22 misdemeanor and shall be subject to the penalties set forth in
23 Subsection A of Section 31-19-1 NMSA 1978."

24 Section 2. Section 32A-2-3 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 32, as amended) is amended to read:

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1 "32A-2-3. DEFINITIONS. --As used in the Delinquency Act:

2 A. "delinquent act" means an act committed by a child
3 that would be designated as a crime under the law if committed
4 by an adult, including the following offenses:

5 (1) pursuant to municipal traffic codes or the
6 Motor Vehicle Code:

7 (a) any driving while under the influence of
8 intoxicating liquor or drugs;

9 (b) any failure to stop in the event of an
10 accident causing death, personal injury or damage to property;

11 (c) any unlawful taking of a vehicle or motor
12 vehicle;

13 (d) any receiving or transferring of a stolen
14 vehicle or motor vehicle;

15 (e) any homicide by vehicle;

16 (f) any injuring or tampering with a vehicle;

17 (g) any altering or changing of an engine
18 number or other vehicle identification numbers;

19 (h) any altering or forging of a driver's
20 license or permit or any making of a fictitious license or
21 permit;

22 (i) reckless driving;

23 (j) driving with a suspended or revoked
24 license; or

25 (k) any offense punishable as a felony;

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1 (2) buying, attempting to buy, receiving,
2 possessing or being served any alcoholic liquor or being present
3 in a licensed liquor establishment, other than a restaurant or a
4 licensed retail liquor establishment, except in the presence of
5 the child's parent, guardian, custodian or adult spouse. As
6 used in this paragraph, "restaurant" means any establishment
7 where meals are prepared and served primarily for on-premises
8 consumption and that has a dining room, a kitchen and the
9 employees necessary for preparing, cooking and serving meals.
10 "Restaurant" does not include establishments, as defined in
11 regulations promulgated by the director of the special
12 investigations division of the department of public safety, that
13 serve only hamburgers, sandwiches, salads and other fast foods;

14 (3) any felony violation of the provisions of
15 Sections 17-1-1 through 17-5-9 NMSA 1978 or any regulations
16 adopted by the state game commission that relate to the time,
17 extent, means or manner that game animals, birds or fish may be
18 hunted, taken, captured, killed, possessed, sold, purchased or
19 shipped and for which a fine may be imposed or a civil damage
20 awarded;

21 (4) any violation of Section 30-29-2 NMSA 1978,
22 regarding the illegal use of a glue, aerosol spray product or
23 other chemical substance;

24 (5) any violation of the Controlled Substances
25 Act;

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1 (6) escape from the custody of a law enforcement
2 officer or a juvenile probation or parole officer or from any
3 placement made by the department by a child who has been
4 adjudicated a delinquent child; [øø]

5 (7) any violation of Section 30-15-1.1 NMSA 1978
6 regarding unauthorized graffiti on personal or real property;

7 (8) any child subject to the Compulsory School
8 Attendance Law who is absent from school without excuse for more
9 than ten days during a school semester; or

10 (9) disobedience, resistance, contempt or refusal
11 to obey any lawful order, rule or process of the court;

12 B. "delinquent child" means a child who has committed
13 a delinquent act;

14 C. "delinquent offender" means a delinquent child who
15 is subject to juvenile sanctions only and who is not a youthful
16 offender or a serious youthful offender;

17 D. "detention facility" means a place where a child
18 may be detained under the Children's Code pending court hearing
19 and does not include a facility for the care and rehabilitation
20 of an adjudicated delinquent child;

21 E. "felony" means an act that would be a felony if
22 committed by an adult;

23 F. "misdemeanor" means an act that would be a
24 misdemeanor or petty misdemeanor if committed by an adult;

25 G. "restitution" means financial reimbursement by the

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1 child to the victim or community service imposed by the court
2 and is limited to easily ascertainable damages for injury to or
3 loss of property, actual expenses incurred for medical,
4 psychiatric and psychological treatment for injury to a person
5 and lost wages resulting from physical injury, which are a
6 direct and proximate result of a delinquent act. "Restitution"
7 does not include reimbursement for damages for mental anguish,
8 pain and suffering or other intangible losses. As used in this
9 subsection, "victim" means any person who is injured or suffers
10 damage of any kind by an act that is the subject of a complaint
11 or referral to law enforcement officers or juvenile probation
12 authorities. Nothing contained in this definition limits or
13 replaces the provisions of Subsections A and B of Section
14 32A-2-27 NMSA 1978;

15 H. "serious youthful offender" means an individual
16 fifteen to eighteen years of age who is charged with and
17 indicted or bound over for trial for first degree murder. A
18 "serious youthful offender" is not a delinquent child as defined
19 pursuant to the provisions of this section; and

20 I. "youthful offender" means a delinquent child
21 subject to adult or juvenile sanctions who is:

22 (1) fourteen to eighteen years of age at the time
23 of the offense and who is adjudicated for at least one of the
24 following offenses:

25 (a) second degree murder, as provided in

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1 Section 30-2-1 NMSA 1978;

2 (b) assault with intent to commit a violent
3 felony, as provided in Section 30-3-3 NMSA 1978;

4 (c) kidnapping, as provided in Section
5 30-4-1 NMSA 1978;

6 (d) aggravated battery, as provided in
7 [~~Subsection C of~~] Section 30-3-5 NMSA 1978;

8 (e) aggravated battery upon a peace officer,
9 as provided in [~~Subsection C of~~] Section 30-22-25 NMSA 1978;

10 (f) shooting at a dwelling or occupied
11 building or shooting at or from a motor vehicle, as provided in
12 Section 30-3-8 NMSA 1978;

13 (g) dangerous use of explosives, as provided
14 in Section 30-7-5 NMSA 1978;

15 (h) criminal sexual penetration, as provided
16 in Section 30-9-11 NMSA 1978;

17 (i) robbery, as provided in Section
18 30-16-2 NMSA 1978;

19 (j) aggravated burglary, as provided in
20 Section 30-16-4 NMSA 1978;

21 (k) aggravated arson, as provided in Section
22 30-17-6 NMSA 1978; or

23 (l) abuse of a child that results in great
24 bodily harm or death to the child, as provided in Section 30-6-1
25 NMSA 1978;

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(2) fourteen to eighteen years of age at the time of the offense and adjudicated for any felony offense and who has had three prior, separate felony adjudications within a three-year time period immediately preceding the instant offense. The felony adjudications relied upon as prior adjudications shall not have arisen out of the same transaction or occurrence or series of events related in time and location. Successful completion of consent decrees are not considered a prior adjudication for the purposes of this paragraph; or

(3) fourteen years of age and adjudicated for first degree murder, as provided in Section 30-2-1 NMSA 1978."